TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 413

THE ÆTNA CASUALTY AND SURETY COMPANY,
PETITIONER,

vs.

PHŒNIX NATIONAL BANK AND TRUST COMPANY
OF LEXINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 25, 1931

CERTIORARI GRANTED NOVEMBER 2, 1931

(36,227)

(36,227)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 413

THE ÆTNA CASUALTY AND SURETY COMPANY, PETITIONER,

vs.

PHŒNIX NATIONAL BANK AND TRUST COMPANY OF LEXINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

	Original	Print
Record from district court of the United States, Eastern Kentucky	1	1
Caption (omitted in printing)	1	
Record from circuit court of Fayette County	2	1
Petition	2	1
Exhibit—Proof of claim	20	19
Summons to Franklin County and return on same	31	30
Summons to Fayette County and return on same	32	31
Order filing notice, petition for removal and bond and removing cause to United States district court of Kentucky	33	31
Notice of acceptance of same	34	32
Petition for removal	35	33
Bond for removal	37	34
Certificate of clerk (omitted in printing)	38	
Order filing transcript	40	36
Motion to require plaintiff to file bond sued upon	40	36

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 15, 1931

	Original	Print
General demurrer to plaintiff's petition	41	36
Order noting filing of motion and demurrer	42	37
Notice of application to note cause for trial and acceptance of same	42	38
Order assigning for trial	43	38
Order overruling demurrer to plaintiff's petition	43	38
Order filing amended petition	44	39
Amended petition	44	39
Amended and substituted answer	45	39
General demurrer to amended and substituted answer and to second and third paragraphs thereof	52	46
Motion to strike from amended and substituted answer	52	46
Order filing amended and substituted answer, motion to strike therefrom, and demurrers thereto	55	49
Opinion of the court on plaintiff's demurrer to second and third paragraphs of defendant's amended and substituted answer and upon the motion to strike therefrom	56	50
Order filing plaintiff's reply and overruling plaintiff's demurrer to second and third paragraphs of defendant's amended and substituted answer, and overruling motion to strike from said answer	62	56
Plaintiff's reply	62	56
Order filing written stipulation and submitting cause for trial by the court	67	61
Stipulation of facts	68	62
Opinion of the court, Cochran, J.	78	76
Judgment	82	79
Petition for appeal	82	80
Assignment of errors	83	80
Order allowing appeal, fixing bond, filing præcipe, and approving bond	84	81
Bond of plaintiff on appeal (omitted in printing)	85	
Præcipe and acceptance of same	86	82
Order directing clerk to transmit with the record 39 checks, original exhibits, and transmitting record to printer	87	82
Citation and acceptance of same (omitted in printing)	88	
Order extending time for filing printed record	89	83
Stipulation in re certification of record	90	83
Certificates of clerk (omitted in printing)	91	
Proceedings in United States circuit court of appeals, sixth circuit	93	84
Appearance of counsel	93	84
Argument and submission	93	84
Judgment	93	85
Opinion, Denison, J.	94	85
Petition for rehearing (omitted in printing)	99	
Order denying rehearing	111	90
Clerk's certificate (omitted in printing)	111	
Order allowing certiorari	112	90

[fol. 1] [Caption omitted]

[fol. 2]

IN CIRCUIT COURT OF FAYETTE COUNTY

PHŒNIX NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, a Corporation, Plaintiff,

vs.

THE ÆTNA CASUALTY AND SURETY COMPANY, a Corporation, Defendant

PETITION—Filed February 3, 1926

The plaintiff, Phœnix National Bank and Trust Company, of Lexington, says that it is a corporation, created and incorporated under the law passed by Congress, known as the National Banking Act, with power to engage in the banking business, at Lexington, Kentucky, contract, sue and be sued in its said corporate name; that the defendant Ætna Casualty and Surety Company, is a corporation created and incorporated under the laws of the State of Connecticut, with power and authority to engage in the business of fidelity and guaranty insurance, and to issue policies or bonds, covering all contracts, in which it undertakes to and does engage in said business, and to contract, sue and be sued in said corporate name.

Plaintiff says that heretofore, to-wit, on the 14th day of November, 1923, for a valuable consideration paid to the said defendant by plaintiff herein, the defendant did issue and deliver to plaintiff one of defendant's contracts, policies or bonds, known as "Bankers' Blanket Bond, Standard Form No. 8, Bond No. 132522", in words and figures as follows, to-wit:

"The Ætna Casualty and Surety Company, Hartford, Connecticut, Morgan B. Brainard, President

Bankers' Blanket Bond (Standard Form No. 8)

Bond No: F-132522.
Amount: $25,000.00.

In Consideration of an annual premium, The Ætna Casualty and Surety Company, a corporation of the State of Connecticut, with its home office in the City of Hartford,

[fol. 3] hereinafter referred to as Underwriter, hereby undertakes and agrees to indemnify Phœnix National Bank and Trust Company, Lexington, Kentucky, hereinafter referred to as the Insured, and hold it harmless to an amount not exceeding Twenty-five Thousand and no/100ths Dollars, ($25,000.00) from and against any loss sustained by the Insured subsequent to noon of the date hereof and while this bond is in force and discovered by the Insured subsequent to noon of the date hereof and prior to the expiration of twelve months after the termination of this bond has provided in Condition 11 hereof, that is to say:

A. Any loss through any dishonest or criminal act of any of the Insured's officers, clerks or other employees employed in, at or by any of the Insured's offices covered hereunder during the currency of this bond (all such officers, clerks and other employees being hereinafter referred to as Employees), wherever committed and whether committed directly or by collusion with others.

B. Any loss of money, currency, bullion, bonds, debentures, scrip, certificates, warrants, transfers, coupons, bills of exchange, promissory notes, checks or other similar securities, in which the Insured has a pecuniary interest, or which are held by the Insured as collateral or as bailee, trustee, custodian, agent or in any other capacity, and whether or not the Insured is liable therefor (all of such money, currency, bullion, bonds, debentures, script, certificates, warrants, transfers, coupons, bills of exchange, promissory notes, checks or other similar securities being hereinafter referred to as Property), through robbery, larceny (whether common-law or Statutory), burglary, theft, hold-up, misplacement, or destruction, whether effected with or without violence or with or without negligence on the part of any of the Employees, while the Property is within any of the Insured's offices covered hereunder, or within any recognized places of safe deposit within the United States, or within the premises of any of the Insured's bankers, or lodged or deposited by the Insured in the ordinary course of business for exchange, conversion or registration with the issuers thereof or with any agents of such issuers, or with any persons employed to procure or manage the exchange, conversion or registration thereof.

C. Any loss of Property through misplacement, destruc-
[fol. 4] tion, robbery, larceny, (whether common-law or statutory), hold-up or theft, while such Property is in transit within the United States and in the custody of any of the Employees or any partner of the Insured, or through negligence, or otherwise, on the part of any of the Employees having custody of the Property, while in transit as aforesaid; such transit risk to begin immediately upon receipt of such Property by the transporting Employee or Employees or partner and to end immediately upon delivery thereof at destination.

D. Any loss through the payment, whether received over the counter or through the clearing house or by mail, of forged or raised checks or (genuine) checks bearing forged endorsements or the establishment of any credit to any customer on the faith of such checks.

The foregoing agreement is subject to the following conditions and Limitations:

1. The offices of the Insured which are covered hereunder are located as follows: Main Office: Lexington, Kentucky. Branches: None.

If the Insured shall give to the Underwriter notice that he desires any other office to be covered hereunder, then, if the Underwriter shall give its written consent thereto, such office shall be covered hereunder from and after the receipt of such notice, and an additional premium shall be paid. No notice to the Underwriter of an increase during any premium year in the number of Employees at any of the offices covered hereunder need be given, and no additional premium need be paid unless such increase shall result from the merger or combination with the Insured of another banking institution.

2. This bond does not cover:

a. Any loss effected by means of forgery, except when covered by insuring clauses (A) and (D) hereof.

b. Any loss resulting from riot, civil commotion (unless such loss result while the Property is in transit in the custody of an Employee or partner aforesaid and unless when such Employee or partner was dispatched there was no knowledge on the part of the Insured or any of its officers